

EPA Region 10
NPDES Permit Application Instructions
For Regulated Small Municipal Separate Storm Sewer Systems (MS4s)
in EPA's Jurisdiction within the Pacific Northwest

March 2003

Introduction

The U.S. Environmental Protection Agency - Region 10 (EPA) is providing this "Question & Answer" document outlining permit application requirements to assist the operators of small municipal separate storm sewer systems (MS4s) required to obtain a National Pollutant Discharge Elimination System (NPDES) permit for storm water discharges.

This document is intended for use only by MS4 operators in the areas of Idaho, Alaska, Washington and Oregon where EPA is the NPDES permitting authority.

EPA published the "Phase II" regulations addressing small municipal storm sewer systems on December 8, 1999.¹ This "Question & Answer" document addresses the Phase II application requirements for MS4 operators seeking NPDES permit coverage for storm water management plans to be implemented under 40 CFR 122.34 (i.e., a storm water management plan based on the "six minimum measures").²

EPA Region 10 has not yet issued a general NPDES permit for storm water discharges from regulated small MS4s, but does intend to issue such a permit. Until EPA issues the general permit, small MS4s must apply for individual permits as required by 40 CFR 122.33; this document outlines the individual permit application procedures described at 40 CFR 122.33(b)(2)(i). Any application information provided by MS4 operators by the deadlines outlined below will fulfill upcoming general permit application requirements.

All regulatory citations referencing the Phase II MS4 application requirements are underlined and included as an appendix starting on page 5.

Please note: there are no application forms for the Phase II MS4 permit program at this time. A permit application can be substantively completed by following the applicable regulations and by using the guideline suggestions included in this document. Other EPA-published guidance material may provide additional clarification of these requirements, and are listed at the end of this document.

¹64 FR 68721.

² MS4 operators who seek a permit to discharge under an individual permit, either: 1) through implementing a program different from the "six minimum measures" program under 40 CFR 122.34, or 2) by participating in an existing "Phase I" NPDES municipal permit program as a limited co-permittee, must comply with the application requirements for "Phase I" municipalities contained in 40 CFR 122.26(d). These requirements are not addressed by this EPA Region 10 Q&A document. Please contact EPA Region 10 directly for more information about the "Phase I" MS4 application process.

Who Must Apply for Permit Coverage?

All “regulated small MS4s” defined at 40 CFR 122.32(a) must apply for NPDES permit coverage for their storm water discharges. The basic term “small municipal separate storm sewer system” is defined at 40 CFR 122.26(b)(16). A “regulated small MS4” is an MS4 located within an urbanized area defined by the latest Census, or an MS4 that has been specifically designated by EPA Region 10.

Can Multiple MS4 Operators Submit a Joint Permit Application?

Yes. EPA Region 10 allows multiple regulated entities to create a storm water management plan and jointly apply as co-permittees. The joint application must identify the persons or persons within each organization responsible for implementing/coordinating the storm water management program and must be signed by the responsible official of each organization. See 40 CFR 122.33, 122.34, and 122.35 for more information.

Where Should Applications be Sent?

All application packages should be mailed to the following address:

U.S. EPA Region 10
Office of Water - Attn: Storm Water Program
1200 6th Avenue (OW-130)
Seattle, Washington 98101

When Must Applications be Submitted?

Operators of regulated small MS4s located within Census Bureau-defined Urbanized Areas must apply for NPDES permit coverage by March 10, 2003. Late applications are accepted.

Operators of MS4s located outside of a Urbanized Area that are otherwise designated by EPA under 40 CFR 122.32(a)(2) will be required to apply for permit coverage by a date specified by EPA-Region 10 at the time of designation. See 40 CFR 122.33(c).

Who Must Sign the Application?

NPDES regulations at 40 CFR 122.22 specify that all permit applications from a municipality, state, federal or other public agency must be signed by either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes: 1) the chief executive officer of the agency, or 2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

For joint applications, representatives of each co-applicant must sign the application as described above.

All applications must be signed using the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and

belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

What Information Must be Included in the Application?

The following basic information must be included in all NPDES permit applications, as required by 40 CFR 122.21(f). Where appropriate, suggestions for addressing the requested item are included:

- 1) Activities by the applicant that require obtaining an NPDES permit.

(Suggestion: This item can be addressed by a statement such as : “The Applicant Name operates a municipal separate storm sewer system located in _____.”)

- 2) Name, mailing address, and location of the facility for which the application is submitted.

(Suggestion: In the context of the MS4 permitting program, this item should list the name(s), title(s), affiliation(s), mailing address(es), and telephone number(s) of the operator(s) of the MS4(s).)

- 3) Standard Industrial Classification (SIC) Code that reflect the service provided by the facility.

*(Suggestion: Generally speaking, the SIC code established by the federal Office of Management and Budget for public administration/general federal, state or local government activities is **9199**. For additional information on SIC codes, check the Occupational Safety and Health Administration’s website at: <http://www.osha.gov/cgi-bin/sic/sicser5>)*

- 4) The operator name(s), address(es), telephone number(s), ownership status, and status as a federal, state, local, Tribal or other public entity.

(Suggestion: This item should identify the names and titles of the primary administrative and/or technical staff contacts for the municipal operator(s), if different from item #2.)

- 5) Whether the facility is located on Tribal lands.

- 6) A listing of any permits or construction approvals received or applied for under any of the following programs: Resource Conservation or Recovery Act; Underground Injection Control under the Safe Drinking Water Act; NPDES program under the Clean Water Act; Prevention of Significant Deterioration program under the Clean Air Act; Nonattainment program under the Clean Air Act; the National Emission Standards for Hazardous Air Pollutants preconstruction approval under the Clean Air Act, Ocean Dumping Permits under the Marine Protection Research and Sanctuaries Act; Dredge or fill permits under section 404 of the Clean Water Act; or other relevant environmental permits, including state permits.

- 7) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

(Suggestion: A map of the storm sewer system(s), showing the location of all outfalls and names and location of all waters of the United States that receive discharges from those

outfalls, is most appropriate for fulfilling this requirement. If a map of such detail is not available by March 2003, please include any reasonably available version of such a map and a schedule of when such a map will be available. [See 40 CFR 122.34(b)(3)(ii)(A) for a description of the mapping requirement.])

8) A brief description of the nature of the business.

(Suggestion: In the context of the MS4 permitting program, briefly describe the MS4 in terms of its general characteristics, such as: capacity, general operation, or other relevant information.)

The following additional information is required as part of an NPDES application from regulated small MS4(s) according to 40 CFR 122.33(b)(2)(i) and 40 CFR 122.34(d)(1):

9) An estimate of the square mileage served by the MS4(s);

10) Descriptions of the best management practices to be implemented by the applicant or another entity for each of the six storm water minimum control measures described in 40 CFR 122.34(b)(1) through (b)(6);

11) Descriptions of the measurable goals for each BMP, including (as appropriate) the months and years in which the action will be taken, including interim milestones and the frequency of the action; and

12) The person(s) responsible for implementing or coordinating the applicant's storm water management program.

(Suggestion: Your description of the storm water management program should identify those measures that are already in place or are underway, as well as measures that remain to be developed or implemented. As the operator of the MS4, you have the flexibility to determine the BMPs and measurable goals, for each minimum control measure, that are most appropriate for the system. It is not required that all BMPs be fully implemented and in place at the time of application. As stated in 40 CFR 122.34(a), EPA will require full implementation of the applicant's storm water management program no later than the end of the first permit term (NPDES permits are typically issued for a 5 year period). The application package should fully summarize the storm water management plan that is anticipated for the area, and should acknowledge those BMPs that remain to be developed, including time lines and milestones for implementation.)

Questions about the information contained in this document can be directed to Misha Vakoc, EPA Region 10 Storm Water Program Coordinator, at (800) 424-4372, extension 6650.

Appendix

This appendix contains all the regulatory citations (or relevant portions thereof) referenced in this Q&A document, as contained in the Code of Federal Regulations- Title 40, Chapter 1, Part 122 (National Pollutant Discharge Elimination System) Subpart B--Permit Application and Special NPDES Program Requirements.

All citations are listed in numerical order.

All references to “the Director” means the Regional Administrator of EPA or his authorized representative.

This chapter of the CFR can be accessed in its entirety on-line at:

http://www.access.gpo.gov/nara/cfr/waisidx_02/40cfr122_02.html

40 CFR - CHAPTER I - PART 122

§ 122.21 Application Requirements

(f) *Information requirements.* All applicants for NPDES permits, other than POTWs and other TWTDS, must provide the following information to the Director, using the application form provided by the Director. Additional information required of applicants is set forth in paragraphs (g) through (k) of this section.³

- (1) The activities conducted by the applicant which require it to obtain an NPDES permit.
- (2) Name, mailing address, and location of the facility for which the application is submitted.
- (3) Up to four SIC codes which best reflect the principal products or services provided by the facility.
- (4) The operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity.
- (5) Whether the facility is located on Indian lands.
- (6) A listing of all permits or construction approvals received or applied for under any of the following programs:
 - (i) Hazardous Waste Management program under RCRA.
 - (ii) UIC program under SDWA.
 - (iii) NPDES program under CWA.
 - (iv) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.
 - (v) Nonattainment program under the Clean Air Act.
 - (vi) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.
 - (vii) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act.
 - (viii) Dredge or fill permits under section 404 of CWA.
 - (ix) Other relevant environmental permits, including State permits.

³ The complete text of 40 CFR 122.21 is not included in this document, but can be accessed through the Internet at: http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr122_00.html. Paragraphs (g) through (k) are not relevant to the small MS4 permitting program.

(7) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

(8) A brief description of the nature of the business.

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§ 122.22 Signatories to permit applications and reports.

(a) Applications. All permit applications shall be signed as follows:

- (1) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or
- (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

Note: EPA does not require specific assignments or delegations of authority to responsible corporate officers identified in Sec. 122.22(a)(1)(i). The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under Sec. 122.22(a)(1)(ii) rather than to specific individuals.

- (2) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or
- (3) For a municipality, State, Federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:
 - (i) The chief executive officer of the agency, or
 - (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

(b) All reports required by permits, and other information requested by the Director shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- (1) The authorization is made in writing by a person described in paragraph (a) of this section;
- (2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company, (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) and,
- (3) The written authorization is submitted to the Director.

(c) Changes to authorization. If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) Certification. Any person signing a document under paragraph (a) or (b) of this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel

properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(Clean Water Act (33 U.S.C. 1251 et seq.), Safe Drinking Water Act (42 U.S.C. 300f et seq.), Clean Air Act (42 U.S.C. 7401 et seq.), Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.))

40 CFR - CHAPTER I - PART 122

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).⁴

(b) Definitions.

(8) Municipal separate storm sewer means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

(i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;

(ii) Designed or used for collecting or conveying storm water;

(iii) Which is not a combined sewer; and

(iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

(14) Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under this part 122.⁵ For the categories of industries identified in this section, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at part 401⁶ of this chapter); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not

⁴ The text of 40 CFR 123 is not included in this document, but can be accessed through the Internet at: http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr123_00.html .

^{5, 6, 7} Only portions of 122.26 are included in this document. The complete text of 40 CFR 122 can be accessed through the Internet at: http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr122_00.html

mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, State, or municipally owned or operated that meet the description of the facilities listed in paragraphs (b)(14)(i) through (xi) of this section) include those facilities designated under the provisions of paragraph (a)(1)(v)⁷ of this section. The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14):

(x) Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;

(15) Storm water discharge associated with small construction activity means the discharge of storm water from:

(i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The Director may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where:

(A) The value of the rainfall erosivity factor ("R" in the Revised Universal Soil Loss Equation) is less than five during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE), pages 21-64, dated January 1997. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C 552(a) and 1 CFR part 51. Copies may be obtained from EPA's Water Resource Center, Mail Code RC4100, 401 M St. SW, Washington, DC 20460. A copy is also available for inspection at the U.S. EPA Water Docket, 401 M Street SW, Washington, DC 20460, or the Office of the Federal Register, 800 N. Capitol Street N.W. Suite 700, Washington, DC. An operator must certify to the Director that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five; or

(B) Storm water controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this paragraph, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify

to the Director that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

(ii) Any other construction activity designated by the Director, or in States with approved NPDES programs either the Director or the EPA Regional Administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the United States.

Exhibit 1 to Sec. 122.26(b)(15).--Summary of Coverage of ``Storm Water Discharges Associated with Small Construction Activity" Under the NPDES Storm Water Program

Automatic Designation: Required Nationwide Coverage.	* Construction activities that result in a land disturbance of equal to or greater than one acre and less than five acres.
	* Construction activities disturbing less than one acre if part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and less than five acres. (see <u>Sec.122.26(b)(15)(i).</u>)
Potential Designation: Optional Evaluation and Designation by the NPDES Permitting Authority or EPA Regional Administrator.	* Construction activities that result in a land disturbance of less than one acre based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants. (see <u>Sec. 122.26(b)(15)(ii).</u>)
Potential Waiver: Waiver from Requirements as Determined NPDES Permitting Authority.	* Any automatically designated construction activity where the operator a certifies:(1) A rainfall erosivity factor of less than five, or (2) That the by the activity will occur within an area where controls are not needed based on TMDL or, for non-impaired waters that do not require a TMDL, an equivalent analysis for the pollutant(s) of concern. (see Sec. <u>122.26(b)(15)(i).</u>)

(16) Small municipal separate storm sewer system means all separate storm sewers that are:

(i) Owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA⁸ that discharges to waters of the United States.

(ii) Not defined as "large" or "medium" municipal separate storm sewer systems pursuant to paragraphs (b)(4) and (b)(7) of this section, or designated under paragraph (a)(1)(v)⁹ of this section.

⁸ Sections of the federal Clean Water Act can be found through the Internet at <http://www.epa.gov/epahome/laws.htm>

^{9, 10} Only relevant portions of 122.26 is included in this document. The complete text of 40 CFR 122 can be accessed through the Internet at: http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr122_00.html

(iii) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

(17) Small MS4 means a small municipal separate storm sewer system.

(18) Municipal separate storm sewer system means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems pursuant to paragraphs (b)(4), (b)(7), and (b)(16) of this section, or designated under paragraph (a)(1)(v)¹⁰ of this section.

(19) MS4 means a municipal separate storm sewer system.

(f) Petitions. (1) Any operator of a municipal separate storm sewer system may petition the Director to require a separate NPDES permit (or a permit issued under an approved NPDES State program) for any discharge into the municipal separate storm sewer system.

(2) Any person may petition the Director to require a NPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(3) The owner or operator of a municipal separate storm sewer system may petition the Director to reduce the Census estimates of the population served by such separate system to account for storm water discharged to combined sewers as defined by 40 CFR 35.2005(b)(11)¹¹ that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the NPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

(4) Any person may petition the Director for the designation of a large, medium, or small municipal separate storm sewer system as defined by paragraph (b)(4)(iv), (b)(7)(iv), or (b)(16)¹² of this section.

(5) The Director shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of petitions to designate a small MS4 in which case the Director shall make a final determination on the petition within 180 days after its receipt.

¹¹ The text of 40 CFR 35.2005 is not included in this document, but can be accessed through the Internet at: http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr35_00.html

¹² Only relevant portions of 122.26 is included in this document. The complete text of 40 CFR 122 can be accessed through the Internet at: http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr122_00.html

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§ 122.32 As an operator of a small MS4, am I regulated under the NPDES storm water program?

(a) Unless you qualify for a waiver under paragraph (c) of this section, you are regulated if you operate a small MS4, including but not limited to systems operated by federal, State, Tribal, and local governments, including State departments of transportation; and:

- (1) Your small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census. (If your small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated); or
- (2) You are designated by the NPDES permitting authority, including where the designation is pursuant to §§ 123.35(b)(3) and (b)(4) of this chapter, or is based upon a petition under § 122.26(f).

(b) You may be the subject of a petition to the NPDES permitting authority to require an NPDES permit for your discharge of storm water. If the NPDES permitting authority determines that you need a permit, you are required to comply with §§ 122.33 through 122.35.

(c) The NPDES permitting authority may waive the requirements otherwise applicable to you if you meet the criteria of paragraph (d) or (e) of this section. If you receive a waiver under this section, you may subsequently be required to seek coverage under an NPDES permit in accordance with § 122.33(a) if circumstances change. (See also § 123.35(b) of this chapter.)

(d) The NPDES permitting authority may waive permit coverage if your MS4 serves a population of less than 1,000 within the urbanized area and you meet the following criteria:

- (1) Your system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the NPDES storm water program (see § 123.35(b)(4) of this chapter); and
- (2) If you discharge any pollutant(s) that have been identified as a cause of impairment of any water body to which you discharge, storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established "total maximum daily load" (TMDL) that addresses the pollutant(s) of concern.

(e) The NPDES permitting authority may waive permit coverage if your MS4 serves a population under 10,000 and you meet the following criteria:

- (1) The permitting authority has evaluated all waters of the U.S., including small streams, tributaries, lakes, and ponds, that receive a discharge from your MS4;
- (2) For all such waters, the permitting authority has determined that storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern;
- (3) For the purpose of this paragraph (e), the pollutant(s) of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from your MS4; and
- (4) The permitting authority has determined that future discharges from your MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

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§ 122.33 If I am an operator of a regulated small MS4, how do I apply for an NPDES permit and when do I have to apply?

(a) If you operate a regulated small MS4 under § 122.32, you must seek coverage under a NPDES permit issued by your NPDES permitting authority. If you are located in an NPDES authorized State, Tribe, or Territory, then that State, Tribe, or Territory is your NPDES permitting authority. Otherwise, your NPDES permitting authority is the EPA Regional Office.

(b) You must seek authorization to discharge under a general or individual NPDES permit, as follows:

(1) If your NPDES permitting authority has issued a general permit applicable to your discharge and you are seeking coverage under the general permit, you must submit a Notice of Intent (NOI) that includes the information on your best management practices and measurable goals required by § 122.34(d). You may file your own NOI, or you and other municipalities or governmental entities may jointly submit an NOI. If you want to share responsibilities for meeting the minimum measures with other municipalities or governmental entities, you must submit an NOI that describes which minimum measures you will implement and identify the entities that will implement the other minimum measures within the area served by your MS4. The general permit will explain any other steps necessary to obtain permit authorization.

(2)(i) If you are seeking authorization to discharge under an individual permit and wish to implement a program under § 122.34, you must submit an application to your NPDES permitting authority that includes the information required under §§ 122.21(f) and 122.34(d), an estimate of square mileage served by your small MS4, and any additional information that your NPDES permitting authority requests. A storm sewer map that satisfies the requirement of § 122.34(b)(3)(i) will satisfy the map requirement in § 122.21(f)(7).

(ii) If you are seeking authorization to discharge under an individual permit and wish to implement a program that is different from the program under § 122.34, you will need to comply with the permit application requirements of § 122.26(d). You must submit both Parts of the application requirements in §§ 122.26(d)(1) and (2) by March 10, 2003. You do not need to submit the information required by §§ 122.26(d)(1)(ii) and (d)(2) regarding your legal authority, unless you intend for the permit writer to take such information into account when developing your other permit conditions.¹³

(iii) If allowed by your NPDES permitting authority, you and another regulated entity may jointly apply under either paragraph (b)(2)(i) or (b)(2)(ii) of this section to be co-permittees under an individual permit.

(3) If your small MS4 is in the same urbanized area as a medium or large MS4 with an NPDES storm water permit and that other MS4 is willing to have you participate in its storm water program, you and the other MS4 may jointly seek a modification of the other MS4 permit to include you as a limited co-permittee. As a limited co-permittee, you will be responsible for compliance with the permit's conditions applicable to your jurisdiction. If you choose this option you will need to comply with the permit application requirements of § 122.26, rather than the requirements of § 122.34. You do not need to comply with the specific application requirements of § 122.26(d)(1)(iii) and (iv) and (d)(2)(iii) (discharge characterization). You may satisfy the requirements in § 122.26 (d)(1)(v) and (d)(2)(iv) (identification of a management program) by referring to the other MS4's storm water management program.¹⁴

(4) Guidance: In referencing an MS4's storm water management program, you should briefly describe how the existing plan will address discharges from your small MS4 or would need to be supplemented in order to adequately address your discharges. You should also explain your role in

^{13, 14} As mentioned previously, the full text of 40 CFR 122.26 is not included in this document. Please contact EPA directly for Phase I MS4 application procedures referenced at 122.26(d).

coordinating storm water pollutant control activities in your MS4, and detail the resources available to you to accomplish the plan.

(c) If you operate a regulated small MS4:

(1) Designated under § 122.32(a)(1), you must apply for coverage under an NPDES permit, or apply for a modification of an existing NPDES permit under paragraph (b)(3) of this section by March 10, 2003, unless your MS4 serves a jurisdiction with a population under 10,000 and the NPDES permitting authority has established a phasing schedule under § 123.35(d)(3) of this chapter.

(2) Designated under § 122.32(a)(2), you must apply for coverage under an NPDES permit, or apply for a modification of an existing NPDES permit under paragraph (b)(3) of this section, within 180 days of notice, unless the NPDES permitting authority grants a later date.

40 CFR - CHAPTER I - PART 122

§ 122.34 As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?

(a) Your NPDES MS4 permit will require at a minimum that you develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. Your storm water management program must include the minimum control measures described in paragraph (b) of this section unless you apply for a permit under § 122.26(d).¹⁵ For purposes of this section, narrative effluent limitations requiring implementation of best management practices (BMPs) are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the maximum extent practicable) and to protect water quality.

Implementation of best management practices consistent with the provisions of the storm water management program required pursuant to this section and the provisions of the permit required pursuant to § 122.33 constitutes compliance with the standard of reducing pollutants to the "maximum extent practicable." Your NPDES permitting authority will specify a time period of up to 5 years from the date of permit issuance for you to develop and implement your program.

(b) *Minimum control measures --*

(1) *Public education and outreach on storm water impacts.* (i) You must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff.

(ii) *Guidance:* You may use storm water educational materials provided by your State, Tribe, EPA, environmental, public interest or trade organizations, or other MS4s. The public education program should inform individuals and households about the steps they can take to reduce storm water pollution, such as ensuring proper septic system maintenance, ensuring the proper use and disposal of landscape and garden chemicals including fertilizers and pesticides, protecting and restoring riparian vegetation, and properly disposing of used motor oil or household hazardous wastes. EPA recommends that the program inform individuals and groups how to become involved in local stream and beach restoration activities as well as activities that are coordinated by youth service and conservation corps or other citizen groups. EPA recommends that the public education program be tailored, using a mix of locally appropriate strategies, to target specific audiences and communities. Examples of strategies include distributing brochures or fact sheets, sponsoring speaking engagements before community groups, providing public service announcements, implementing educational programs targeted at school age children, and conducting community-based projects such as storm drain stenciling, and watershed and beach cleanups. In addition, EPA recommends that some of the materials or outreach programs be directed toward targeted groups of commercial, industrial, and institutional entities likely to have significant storm water impacts. For example, providing information to restaurants on the impact of grease clogging storm drains and to garages on the impact of oil discharges. You are encouraged to tailor your outreach program to address the viewpoints and concerns of all communities, particularly minority and disadvantaged communities, as well as any special concerns relating to children.

(2) *Public involvement/participation.* (i) You must, at a minimum, comply with State, Tribal and local public notice requirements when implementing a public involvement/ participation program.

(ii) *Guidance:* EPA recommends that the public be included in developing, implementing, and reviewing your storm water management program and that the public participation process should make efforts to reach out and engage all economic and ethnic groups. Opportunities for members of

¹⁵ Contact EPA if you wish to apply for a MS4 permit using the application procedures under Phase I. The text of 40 CFR 122.26 is not included in this document, but can be accessed through the Internet at: http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr122_00.html

the public to participate in program development and implementation include serving as citizen representatives on a local storm water management panel, attending public hearings, working as citizen volunteers to educate other individuals about the program, assisting in program coordination with other pre-existing programs, or participating in volunteer monitoring efforts. (Citizens should obtain approval where necessary for lawful access to monitoring sites.)

(3) *Illicit discharge detection and elimination.* (i) You must develop, implement and enforce a program to detect and eliminate illicit discharges (as defined at § 122.26(b)(2)¹⁶) into your small MS4.

(ii) You must:

(A) Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all waters of the United States that receive discharges from those outfalls;

(B) To the extent allowable under State, Tribal or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into your storm sewer system and implement appropriate enforcement procedures and actions;

(C) Develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, to your system; and

(D) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

(iii) You need to address the following categories of non-storm water discharges or flows (i.e., illicit discharges) only if you identify them as significant contributors of pollutants to your small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)¹⁷), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (discharges or flows from fire fighting activities are excluded from the effective prohibition against non-storm water and need only be addressed where they are identified as significant sources of pollutants to waters of the United States).

(iv) Guidance: EPA recommends that the plan to detect and address illicit discharges include the following four components: procedures for locating priority areas likely to have illicit discharges; procedures for tracing the source of an illicit discharge; procedures for removing the source of the discharge; and procedures for program evaluation and assessment. EPA recommends visually screening outfalls during dry weather and conducting field tests of selected pollutants as part of the procedures for locating priority areas. Illicit discharge education actions may include storm drain stenciling, a program to promote, publicize, and facilitate public reporting of illicit connections or discharges, and distribution of outreach materials.

(4) *Construction site storm water runoff control.* (i) You must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to your small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in your program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the NPDES permitting authority waives requirements for storm water discharges associated with small construction activity in accordance with § 122.26(b)(15)(i), you are not required

¹⁶ 40 CFR 122.26 (b)(2): *Illicit discharge* means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

¹⁷ The text of 40 CFR 35.2005(20) is not included in this document, but can be accessed through the Internet at: http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr35_00.html

to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites.

(ii) Your program must include the development and implementation of, at a minimum:

- (A) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under State, Tribal, or local law;
- (B) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;
- (C) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;
- (D) Procedures for site plan review which incorporate consideration of potential water quality impacts;
- (E) Procedures for receipt and consideration of information submitted by the public, and
- (F) Procedures for site inspection and enforcement of control measures.

(iii) Guidance: Examples of sanctions to ensure compliance include non-monetary penalties, fines, bonding requirements and/or permit denials for non-compliance. EPA recommends that procedures for site plan review include the review of individual pre-construction site plans to ensure consistency with local sediment and erosion control requirements. Procedures for site inspections and enforcement of control measures could include steps to identify priority sites for inspection and enforcement based on the nature of the construction activity, topography, and the characteristics of soils and receiving water quality. You are encouraged to provide appropriate educational and training measures for construction site operators. You may wish to require a storm water pollution prevention plan for construction sites within your jurisdiction that discharge into your system. See § 122.44(s) (NPDES permitting authorities' option to incorporate qualifying State, Tribal and local erosion and sediment control programs into NPDES permits for storm water discharges from construction sites). Also see § 122.35(b) (The NPDES permitting authority may recognize that another government entity, including the permitting authority, may be responsible for implementing one or more of the minimum measures on your behalf.)

(5) *Post-construction storm water management in new development and redevelopment.*

(i) You must develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into your small MS4. Your program must ensure that controls are in place that would prevent or minimize water quality impacts.

(ii) You must:

- (A) Develop and implement strategies which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for your community;
- (B) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State, Tribal or local law; and
- (C) Ensure adequate long-term operation and maintenance of BMPs.

(iii) Guidance: If water quality impacts are considered from the beginning stages of a project, new development and potentially redevelopment provide more opportunities for water quality protection. EPA recommends that the BMPs chosen: be appropriate for the local community; minimize water quality impacts; and attempt to maintain pre-development runoff conditions. In choosing appropriate BMPs, EPA encourages you to participate in locally-based watershed planning efforts which attempt to involve a diverse group of stakeholders including interested citizens. When developing a program that is consistent with this measure's intent, EPA recommends that you adopt a planning process that identifies the municipality's program goals (e.g., minimize water quality impacts resulting from post-construction runoff from new development and redevelopment), implementation strategies (e.g., adopt a combination of structural and/or non-structural BMPs), operation and maintenance policies and procedures, and enforcement procedures. In developing your program, you should consider assessing existing ordinances, policies, programs and studies that address storm water runoff quality. In addition to assessing these existing documents and programs, you should provide opportunities to the public to participate in the development of the program. Non-structural BMPs are preventative

actions that involve management and source controls such as: policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; policies or ordinances that encourage infill development in higher density urban areas, and areas with existing infrastructure; education programs for developers and the public about project designs that minimize water quality impacts; and measures such as minimization of percent impervious area after development and minimization of directly connected impervious areas. Structural BMPs include: storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as grassed swales, sand filters and filter strips; and infiltration practices such as infiltration basins and infiltration trenches. EPA recommends that you ensure the appropriate implementation of the structural BMPs by considering some or all of the following: pre-construction review of BMP designs; inspections during construction to verify BMPs are built as designed; post-construction inspection and maintenance of BMPs; and penalty provisions for the noncompliance with design, construction or operation and maintenance. Storm water technologies are constantly being improved, and EPA recommends that your requirements be responsive to these changes, developments or improvements in control technologies.

(6) *Pollution prevention/good housekeeping for municipal operations.* (i) You must develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, your State, Tribe, or other organizations, your program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.

(ii) Guidance: EPA recommends that, at a minimum, you consider the following in developing your program: maintenance activities, maintenance schedules, and long-term inspection procedures for structural and non-structural storm water controls to reduce floatables and other pollutants discharged from your separate storm sewers; controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations and snow disposal areas operated by you, and waste transfer stations; procedures for properly disposing of waste removed from the separate storm sewers and areas listed above (such as dredge spoil, accumulated sediments, floatables, and other debris); and ways to ensure that new flood management projects assess the impacts on water quality and examine existing projects for incorporating additional water quality protection devices or practices. Operation and maintenance should be an integral component of all storm water management programs. This measure is intended to improve the efficiency of these programs and require new programs where necessary. Properly developed and implemented operation and maintenance programs reduce the risk of water quality problems.

(c) If an existing qualifying local program requires you to implement one or more of the minimum control measures of paragraph (b) of this section, the NPDES permitting authority may include conditions in your NPDES permit that direct you to follow that qualifying program's requirements rather than the requirements of paragraph (b) of this section. A qualifying local program is a local, State or Tribal municipal storm water management program that imposes, at a minimum, the relevant requirements of paragraph (b) of this section.

(d)(1) In your permit application (either a notice of intent for coverage under a general permit or an individual permit application), you must identify and submit to your NPDES permitting authority the following information:

- (i) The best management practices (BMPs) that you or another entity will implement for each of the storm water minimum control measures at paragraphs (b)(1) through (b)(6) of this section;
- (ii) The measurable goals for each of the BMPs including, as appropriate, the months and years in which you will undertake required actions, including interim milestones and the frequency of the action; and
- (iii) The person or persons responsible for implementing or coordinating your storm water

management program.

(2) If you obtain coverage under a general permit, you are not required to meet any measurable goal(s) identified in your notice of intent in order to demonstrate compliance with the minimum control measures in paragraphs (b)(3) through (b)(6) of this section unless, prior to submitting your NOI, EPA or your State or Tribe has provided or issued a menu of BMPs that addresses each such minimum measure. Even if no regulatory authority issues the menu of BMPs, however, you still must comply with other requirements of the general permit, including good faith implementation of BMPs designed to comply with the minimum measures.

(3) Guidance: Either EPA or your State or Tribal permitting authority will provide a menu of BMPs. You may choose BMPs from the menu or select others that satisfy the minimum control measures.

(e)(1) You must comply with any more stringent effluent limitations in your permit, including permit requirements that modify, or are in addition to, the minimum control measures based on an approved total maximum daily load (TMDL) or equivalent analysis. The permitting authority may include such more stringent limitations based on a TMDL or equivalent analysis that determines such limitations are needed to protect water quality.

(2) Guidance: EPA strongly recommends that until the evaluation of the storm water program in § 122.37, no additional requirements beyond the minimum control measures be imposed on regulated small MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality.

(f) You must comply with other applicable NPDES permit requirements, standards and conditions established in the individual or general permit, developed consistent with the provisions of §§ 122.41 through 122.49¹⁸, as appropriate.

(g) *Evaluation and assessment --*

(1) *Evaluation.* You must evaluate program compliance, the appropriateness of your identified best management practices, and progress towards achieving your identified measurable goals.

Note to Paragraph (g)(1): The NPDES permitting authority may determine monitoring requirements for you in accordance with State/Tribal monitoring plans appropriate to your watershed. Participation in a group monitoring program is encouraged.

(2) *Recordkeeping.* You must keep records required by the NPDES permit for at least 3 years. You must submit your records to the NPDES permitting authority only when specifically asked to do so. You must make your records, including a description of your storm water management program, available to the public at reasonable times during regular business hours (see § 122.7¹⁹ for confidentiality provision). (You may assess a reasonable charge for copying. You may require a member of the public to provide advance notice.)

(3) *Reporting.* Unless you are relying on another entity to satisfy your NPDES permit obligations under § 122.35(a), you must submit annual reports to the NPDES permitting authority for your first permit term. For subsequent permit terms, you must submit reports in year two and four unless the NPDES permitting authority requires more frequent reports. Your report must include:

- (i) The status of compliance with permit conditions, an assessment of the appropriateness of your identified best management practices and progress towards achieving your identified measurable goals for each of the minimum control measures;
- (ii) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;
- (iii) A summary of the storm water activities you plan to undertake during the next reporting cycle;
- (iv) A change in any identified best management practices or measurable goals for any of the

^{18, 19} The text of 40 CFR 122.10 and 122.41 -49 is not included in this document, but can be accessed through the Internet at: http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr122_00.html

minimum control measures; and

(v) Notice that you are relying on another governmental entity to satisfy some of your permit obligations (if applicable).

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§ 122.35 As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?

(a) You may rely on another entity to satisfy your NPDES permit obligations to implement a minimum control measure if:

- (1) The other entity, in fact, implements the control measure;
- (2) The particular control measure, or component thereof, is at least as stringent as the corresponding NPDES permit requirement; and
- (3) The other entity agrees to implement the control measure on your behalf. In the reports you must submit under Sec. 122.34(g)(3), you must also specify that you rely on another entity to satisfy some of your permit obligations. If you are relying on another governmental entity regulated under section 122²⁰ to satisfy all of your permit obligations, including your obligation to file periodic reports required by Sec. 122.34(g)(3), you must note that fact in your NOI, but you are not required to file the periodic reports. You remain responsible for compliance with your permit obligations if the other entity fails to implement the control measure (or component thereof). Therefore, EPA encourages you to enter into a legally binding agreement with that entity if you want to minimize any uncertainty about compliance with your permit.

(b) In some cases, the NPDES permitting authority may recognize, either in your individual NPDES permit or in an NPDES general permit, that another governmental entity is responsible under an NPDES permit for implementing one or more of the minimum control measures for your small MS4 or that the permitting authority itself is responsible. Where the permitting authority does so, you are not required to include such minimum control measure(s) in your storm water management program. (For example, if a State or Tribe is subject to an NPDES permit that requires it to administer a program to control construction site runoff at the State or Tribal level and that program satisfies all of the requirements of Sec. 122.34(b)(4), you could avoid responsibility for the construction measure, but would be responsible for the remaining minimum control measures.) Your permit may be reopened and modified to include the requirement to implement a minimum control measure if the entity fails to implement it.

²⁰ The text of 40 CFR 122 is not included in its entirety in this document, but can be accessed through the Internet at: http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr122_00.html

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§ 122.36 As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in §§ 122.33 through 122.35?

NPDES permits are federally enforceable. Violators may be subject to the enforcement actions and penalties described in Clean Water Act sections 309 (b), (c), and (g) and 505, or under applicable State, Tribal, or local law. Compliance with a permit issued pursuant to section 402 of the Clean Water Act is deemed compliance, for purposes of sections 309 and 505, with sections 301, 302, 306, 307, and 403, except any standard imposed under section 307 for toxic pollutants injurious to human health. If you are covered as a co-permittee under an individual permit or under a general permit by means of a joint Notice of Intent you remain subject to the enforcement actions and penalties for the failure to comply with the terms of the permit in your jurisdiction except as set forth in § 122.35(b).²¹

²¹ The Clean Water Act sections referenced in this section can be accessed through the Internet at <http://www.epa.gov/epahome/laws.htm>

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§ 122.37 Will the small MS4 storm water program regulations at §§ 122.32 through 122.36 and § 123.35 of this chapter change in the future?

EPA will evaluate the small MS4 regulations at §§ 122.32 through 122.36 and § 123.35 of this chapter after December 10, 2012 and make any necessary revisions. (EPA intends to conduct an enhanced research effort and compile a comprehensive evaluation of the NPDES MS4 storm water program. EPA will re-evaluate the regulations based on data from the NPDES MS4 storm water program, from research on receiving water impacts from storm water, and the effectiveness of best management practices (BMPs), as well as other relevant information sources.)

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§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25)²².

(s) Qualifying State, Tribal, or local programs. (1) For storm water discharges associated with small construction activity identified in § 122.26(b)(15), the Director may include permit conditions that incorporate qualifying State, Tribal, or local erosion and sediment control program requirements by reference. Where a qualifying State, Tribal, or local program does not include one or more of the elements in this paragraph (s)(1), then the Director must include those elements as conditions in the permit. A qualifying State, Tribal, or local erosion and sediment control program is one that includes:

(i) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(ii) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(iii) Requirements for construction site operators to develop and implement a storm water pollution prevention plan. (A storm water pollution prevention plan includes site descriptions, descriptions of appropriate control measures, copies of approved State, Tribal or local requirements, maintenance procedures, inspection procedures, and identification of non-storm water discharges); and

(iv) Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

(2) For storm water discharges from construction activity identified in § 122.26(b)(14)(x), the Director may include permit conditions that incorporate qualifying State, Tribal, or local erosion and sediment control program requirements by reference. A qualifying State, Tribal or local erosion and sediment control program is ne that includes the elements listed in paragraph (s)(1) of this section and any additional requirements necessary to achieve the applicable technology-based standards of "best available technology" and "best conventional technology" based on the best professional judgment of the permit writer.

²² The text of 40 CFR 123 is not included in its entirety in this document, but can be accessed through the Internet at: http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr123_00.html .

Other Guidance Material is Available from EPA via the Region 10 Storm Water Webpage at <http://www.epa.gov/r10earth/stormwater.htm> (once there, click on “Phase II Small Municipal Program”) or by contacting Misha Vakoc, Storm Water Program Coordinator, at (800) 424-4372, extension 6650 or vakoc.misha@epa.gov .

Guidance Materials Include:

Measurable Goals Guidance (October 2001)

BMP Menu Guidance (October 2000)

Introduction, Public Education and Outreach, Public Involvement, Illicit Detection/Elimination, Construction Site Runoff Control, Post Construction SW Management, Pollution Prevention/Good Housekeeping

Phase II Compliance Assistance Guide (EPA 833-00-002, March 2000)

Census Bureau Urbanized Area Boundary Maps

Place Map and Street Map for each UA In Region 10

Storm Water Phase II fact sheet series

MS4 Permit Decision Flow Chart

EPA’s Model MS4 General Permit

Region 10 Designation Criteria for MS4s outside Urban Areas